

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

LISA D. CHRIST,

No. 26508-1-III

Respondent,

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v.

LESLIE HAMILTON,

UNPUBLISHED OPINION

Appellant.

Kulik, J.—Lisa Christ filed a complaint for partition asking the court to divide a parcel of real property between Ms. Christ and Leslie Hamilton. The complaint included a request for the return of Ms. Christ’s personal property. The trial court ordered Ms. Hamilton to return Ms. Christ’s property. Ms. Hamilton challenged the order, arguing that the trial court lacked subject matter jurisdiction because Ms. Christ’s action was limited to the partition of real property. The trial court disagreed and found Ms. Hamilton in contempt for failing to return the personal property. On appeal, Ms. Hamilton asserts the trial court lacked subject matter jurisdiction over an issue of personal property and, therefore, she could not be found in contempt. We disagree and affirm the trial court.

FACTS

On February 7, 2007, Lisa Christ filed a complaint for partition asking the court to divide a parcel of real property between Ms. Christ and Leslie Hamilton. Paragraph 9 of the complaint for partition reads:

Temporary relief is also requested. [Ms.] CHRIST has numerous items of personal property, pets, and vehicles in the home and has been denied access to retrieve said items. (See Exhibit E for list of items . . .)

Clerk's Papers (CP) at 4.

The court approved an agreed temporary order, which provided that Ms. Hamilton would return specific items of personal property to Ms. Christ. In her declaration, Ms. Christ stated that she attempted to pick up her personal property, but Ms. Hamilton did not comply with the order. In April 2007, Ms. Christ filed a motion and declaration for an order to show cause regarding contempt.

On August 17, Ms. Hamilton filed a cross-complaint for dissolution of meretricious relationship. On August 27, Ms. Hamilton failed to appear for the contempt hearing. Ms. Hamilton's attorney argued that the court lacked subject matter jurisdiction to order Ms. Hamilton to return personal property because Ms. Christ's complaint was a

complaint for partition of real property. The court determined it had subject matter jurisdiction because Ms. Christ had asked for the return of personal property in her complaint.

A new hearing date for the contempt motion was set for September 14, but Peter Dahlin, counsel for Ms. Hamilton, failed to appear. On September 20, with all parties and counsel present, the court found that it had jurisdiction over the personal property matters and found Ms. Hamilton in contempt for violating the agreed temporary order. The court also granted Ms. Christ's motion for sanctions and attorney fees. The court denied Ms. Hamilton's motion for reconsideration. This appeal followed.

ANALYSIS

Contempt Order. Ms. Hamilton appeals the trial court's contempt order. She argues the trial court lacked subject matter jurisdiction to issue the agreed temporary order. She also maintains that the order was void and that she could not have violated a void order. We disagree.

A contempt order is reviewed for an abuse of discretion. *State v. Caffrey*, 70 Wn.2d 120, 122-23, 422 P.2d 307 (1966). An abuse of discretion is a decision that is based on manifestly unreasonable or untenable grounds. *In re Marriage of McDole*, 122 Wn.2d 604, 610, 859 P.2d 1239 (1993).

Subject matter jurisdiction is the court's authority to hear and decide specific kinds of cases. "Parties cannot confer subject matter jurisdiction on the court by agreement between themselves; a court either has subject matter jurisdiction or it does not." *In re Marriage of Furrow*, 115 Wn. App. 661, 667, 63 P.3d 821 (2003) (citing *In re Habeas Corpus of Wesley*, 55 Wn.2d 90, 93-94, 346 P.2d 658 (1959)).

Ms. Hamilton contends the trial court erred by finding that jurisdiction was invoked by the parties when they signed the agreed temporary order. However, while parties cannot acquire subject matter jurisdiction merely by agreement, here subject matter jurisdiction existed independent of the parties' agreed order.

The superior court has subject matter jurisdiction to hear all cases in equity. Const. art. IV, § 6 ("Superior courts and district courts have concurrent jurisdiction in cases in equity."). And by statute, the superior court has subject matter jurisdiction in all cases of equity and in all other cases where the amount in controversy is \$300. RCW 2.08.010. Accordingly, the superior court had subject matter jurisdiction over Ms. Christ's personal property claim.

The superior court has jurisdiction from the time the action commences. *State v. Sponburgh*, 84 Wn.2d 203, 206, 525 P.2d 238 (1974). Here, the action commenced when Ms. Christ filed her complaint. The complaint was labeled "Complaint for Partition" but

paragraph 9 asked for the return of specific items of personal property. CP at 3-4.

“Pleadings are to be construed liberally; if a complaint states facts entitling the plaintiff to some relief it is immaterial by what name the action is called.” *Simpson v. State*, 26 Wn. App. 687, 691, 615 P.2d 1297 (1980).

The complaint requested two forms of relief: partition of real property and the return of specific items of personal property. The superior court had subject matter jurisdiction to hear both claims and, therefore, acted properly by signing the agreed temporary order. Ms. Hamilton violated that order and was properly held in contempt.

Sanctions. “The appellate court on its own initiative or on motion of a party may order a party or counsel . . . who uses these rules for the purpose of delay, files a frivolous appeal, or fails to comply with these rules to pay terms or compensatory damages to any other party who has been harmed by the delay or the failure to comply.” RAP 18.9.

An appeal is frivolous if there are no debatable issues upon which reasonable minds might differ, and it is so totally devoid of merit that there was no reasonable possibility of reversal. *Streater v. White*, 26 Wn. App. 430, 434-35, 613 P.2d 187

¹ Ms. Christ argues that CR 11 should apply to appellate court sanctions based on *Bryant v. Joseph Tree, Inc.*, 119 Wn.2d 210, 223, 829 P.2d 1099 (1992), which stated: “RAP 18.7 provides, however, that: ‘[e]ach paper filed pursuant to [the Rules of Appellate Procedure] should be dated and signed by an attorney or party as provided in

(1980).¹ We construe any doubt about whether an appeal is frivolous in favor of the appellant. *Id.* at 434-35. Here, there were no complex rules to be applied, just the simple rules of pleading and knowledge of what constitutes a valid claim in a complaint. Ms. Hamilton argues that a personal property claim cannot be tried with a real property claim. This argument is unpersuasive and is not supported by any authority.

On two occasions, the court found that it had subject matter jurisdiction based on the partition action.

The trial court twice explained and rejected Ms. Hamilton's argument on subject matter jurisdiction. Yet, Mr. Dahlin continued to raise the issue and then appealed on that issue alone. The appeal is completely without merit, unsupported by any authority, and frivolous. Accordingly, we affirm the trial court and order Ms. Hamilton to pay Ms. Christ's costs and attorney fees on appeal.

CR 11.”” However, RAP 18.7 has undergone two revisions since *Bryant* and no longer mentions CR 11. Hence, this case can be resolved with RAP 18.9 and *Streater*.

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A majority of the panel has determined this opinion will not be printed in the Washington Appellate Reports, but it will be filed for public record pursuant to RCW 2.06.040.

Kulik, J.

WE CONCUR:

Schultheis, C.J.

Korsmo, J.